

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LYMAN MCCANN,

Plaintiff,

-v-

3:25-CV-654

CHRISTOPHER JOHNSON, JOSEPH
ESPOSITO, NEW YORK STATE
POLICE,

Defendants.

APPEARANCES:

OF COUNSEL:

LYMAN MCCANN

Plaintiff, *Pro Se*

872

Delaware County Correctional Facility

280 Phoebe Lane

Suite 6

Delhi, New York 13753

DAVID N. HURD

United States District Judge

ORDER ON REPORT & RECOMMENDATION

On May 22, 2025, plaintiff Lyman McCann (“plaintiff”), acting *pro se*, commenced an action against defendants Christopher Johnson (“Johnson”),

Joseph Esposito (“Esposito”)¹, and the New York State Police (“State Police”) (collectively “defendants”)), pursuant to 42 U.S.C. § 1983 (“§ 1983”), for excessive force when defendants Johnson and Esposito allegedly physically assaulted him on September 1, 2024 while he was walking in Margaretville, New York. Dkt. No. 1. Thereafter, plaintiff filed a motion to proceed *in forma pauperis* (“IFP Application”), which was granted. Dkt. Nos. 3–4.

On June 6, 2025, U.S. Magistrate Judge Daniel J. Stewart advised by Report & Recommendation (“R&R”) that (1) plaintiff’s excessive force claims against Johnson and Esposito are sufficiently alleged; and (2) defendant, as a state agency, is immune from suit under § 1983. Dkt. No. 5 at 4–6. Plaintiff has not filed any objections and the deadline to do so has passed. *See* Dkt. No. 5.

Upon review for clear error, Judge Stewart’s R&R is accepted and will be adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

ORDERED that

1. The Report & Recommendation (Dkt. No. 5) is ACCEPTED and ADOPTED in all respects;

¹ Plaintiff alleges that defendants Johnson and Esposito are New York State Troopers.

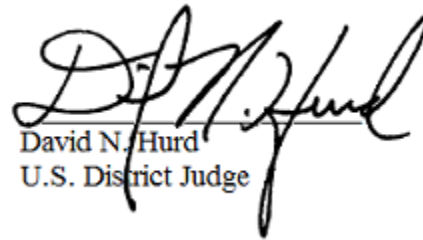
2. Plaintiff's complaint (Dkt. No. 1) is DISMISSED with prejudice as to the State Police;

3. Plaintiff's claims against defendants Johnson and Esposito shall be permitted to proceed;

4. The Clerk is directed serve a copy of this Order on plaintiff by regular mail.

The Clerk is further directed to terminate the pending motion.

IT IS SO ORDERED.



David N. Hurd
U.S. District Judge

Dated: June 27, 2025
Utica, New York.